

ARROW TRANSPORTATION CORPORATION, PETITIONER, VS. BOARD OF TRANSPORTATION AND SULTAN RENT-A-CAR, INC., RESPONDENTS.

G.R. No. L-39655. March 21, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

It must have been the realization that a challenge to a provisional permit issued by respondent Board of Transportation[1] based on the absence of a hearing is not likely to be attended with success that prompted petitioner to rely on another aspect of procedural due process, the infirmity alleged being traceable to what it considered lack of jurisdiction.[2] There is the invocation of Philippine Long Distance Telephone Company v. Medina[3] with its mention of both competitors and the public being notified. It does not suffice. Something more, much more, is necessary. The reliance is misplaced. Its applicability is by no means obvious. As was pointed out in the answer of respondent Board of Transportation, such a claim is hardly persuasive with the procedure set forth in Presidential Decree No. 101 being followed and the provisional authority to operate being based on an urgent public need. Such a contention merits the approval of the Court. The petition cannot prosper.

Both petitioner and private respondent Sultan Rent-a-Car are domestic corporations.[4] The former has in his favor a certificate of public convenience to operate a public utility bus air-conditioned-auto-truck service from Cebu City to Mactan International Airport and vice-versa with the use of twenty (20) units.[5] Private respondent on September 12, 1974 filed a petition with the respondent Board for the issuance of a certificate of public convenience to operate a similar service on the same line.[6] Eight days later, without the required publication, the Board issued an order granting it provisional permit to operate such auto-truck service on the line applied for.[7] There was a motion for reconsideration and for the cancellation of such provisional permit filed on October 21, 1974,[8] but without awaiting final action thereon, this petition was filed.[9] This is the explanation: "That petitioner has not waited for the resolution of his Motion for Reconsideration before going to this Court considering that the question involved herein is purely a legal one, aside from the fact that the issuance of the Order without the Board having acquired jurisdiction of the case yet, is patently illegal or was performed without jurisdiction."[10]

So it was set forth in the petition filed on November 16, 1974. As a preliminary injunction was likewise sought, a hearing was scheduled for November 29, 1974. It was cancelled, this Court issuing a resolution instead, requiring respondents to file an answer not later than December 6, 1974 and setting the hearing on the merits of the case on Wednesday, December 11, 1974. In the answer submitted the facts alleged were substantially admitted.[11] It denied the allegation that there must be a publication before a provisional permit can be issued, reference being made, as noted, to Presidential Decree No. 101, which authorized respondent Board to grant provisional permits when warranted by compelling circumstances and to proceed promptly along the method of legislative inquiry.[12] The case was then argued on December 11, 1974, Attorney Manuel Imbong appearing for petitioner and Assistant Solicitor General Reynato S. Puno appearing for respondent Board of Transportation.[13]

Thereafter, the parties were given twenty days to file their respective memoranda and an additional ten-day period to submit replies thereto if so minded. In time, all the pleadings were submitted, and the case was ready for decision.

The petition, to repeat, cannot prosper.

1. It is to be admitted that the claim for relief on the asserted constitutional deficiency based on procedural due process, not from the standpoint of the absence of a hearing but from the lack of jurisdiction without the required publication having been made, was argued vigorously and developed exhaustively in the memoranda of petitioner. The arguments set forth, while impressed with plausibility, do not suffice to justify the grant of certiorari. Moreover, the doctrine announced in the Philippine Long Distance Telephone Company decision, heavily leaned on by petitioner is, at the most, a frail and insubstantial support and gives way to decisions of this Court that have an even more specific bearing on this litigation.

2. A barrier to petitioner's pretension, not only formidable but also insurmountable, is the well-settled doctrine that for a provisional permit, an ex-parte hearing suffices.[14] The decisive consideration is the existence of the public need.[15] That was shown in this case, respondent Board, on the basis of demonstrable data, being satisfied of the pressing necessity for the grant of the provisional permit sought. There is no warrant for the nullification of what was ordered by it. It must have been, as already noted, this state of the law that did lead petitioner to harp on its interpretation of what for it is the teaching of the Philippine Long Distance Telephone Company decision.[16] There was therein stated that one of the compelling reasons that led this Court to hold that the defunct Public Service Commission did not acquire jurisdiction was that no provision was made for bringing in as parties thereto the competitors of the Philippine Long Distance Telephone Company.[17] That is the basis for the objection on procedural due process ground. While no doubt such a holding was necessary for the decision of that case which dealt with a petition for the reexamination of a decision that was held to be final and executory, it finds no application to this controversy dealing with a provisional permit. This is made clear by this portion of the opinion of Justice Sanchez: "Araneta seeks reexamination of the rates approved by the Commission. Araneta avers that PLDT can carry out its improvement and expansion program at less onerous terms to the subscribers. But Araneta [University] was not a party to the rate-fixing case or to any of the other proceedings below. These rate-fixing and allied cases terminated with the final judgment of January 9, 1964. Not being a party, it could not have moved to reconsider said decision. Nor could it have appealed from that decision — it had no standing in that case. Even if we treat Araneta's reexamination petition as one for reconsideration, the time therefor has long passed." [18] It was then stated: "The reexamination herein sought by Araneta, perforce seeks the fixing of new and different rates." [19] Further: "Araneta, in effect, institutes a fresh petition — for new rates, different from those already established. Such petition is a proceeding separate and distinct from those concluded by the final judgment of PSC of January 9, 1964." [20] The conclusion, therefore, necessarily follows: "We hold that the Public Service Commission may not reduce or increase rates established in a judgment that has become final, without proper notice; and that a Commission order reducing or increasing said rates without such notice is void." [21] Under the facts of that case, the procedural due process infirmity amounting to lack of jurisdiction is quite apparent. The opposite is true with this present petition which deals with a grant of provisional permit. It would be to lift out of context the reference made in the aforesaid opinion with reference to notification to the competitors to give a color of applicability to the situation before us. Clearly then, the allegation of a failure to follow the command of the due process guarantee is bereft of any legal foundation.

3. The question of whether the controversy is ripe for judicial determination was likewise argued by the parties. For it is undeniable that at the time the petition was filed, there was pending with the respondent Board a motion for reconsideration. Ordinarily, its resolution should be awaited. Prior thereto, an objection grounded on

prematurity can be raised. Nonetheless, counsel for petitioner would stress that certiorari lies as the failure to observe procedural due process ousted respondent Board of whatever jurisdiction it could have had in the premises. This Court was impelled to go into the merits of the controversy at this stage, not only because of the importance of the issue raised but also because of the strong public interest in having the matter settled. As was set forth in Executive Order No. 101 which prescribes the procedure to be followed by respondent Board, it is the policy of the State, as swiftly as possible, to improve the deplorable condition of vehicular traffic, obtain maximum utilization of existing public motor vehicles and eradicate the harmful and unlawful trade of clandestine operators, as well as update the standards of those carrying such business, making it "imperative to provide, among other urgently needed measures, more expeditious methods in prescribing, redefining, or modifying the lines and mode of operation of public utility motor vehicles that now or thereafter, may operate in this country." [22] It is essential then both from the standpoint of the firms engaged as well as of the riding public to ascertain whether or not the procedure followed in this case and very likely in others of a similar nature satisfies the procedural due process requirement. Thus its ripeness for adjudication becomes apparent.

To paraphrase what was said in *Edu v. Ericita* [23] where the validity of a legislation was passed upon in a certiorari proceeding to annul and set aside a writ of preliminary injunction, to so act would be to conserve both time and effort. Those desiring to engage in public utility business as well as the public are both vitally concerned with the final determination of the standards to be followed in the procedure that must be observed. There is, to repeat, a great public interest in a definitive outcome of the crucial issue involved. One of the most noted authorities on Administrative Law, Professor Kenneth Culp Davis, discussing the ripeness concept, is of the view that the resolution of what could be a debilitating uncertainty with the conceded ability of the judiciary to work out a solution of the problem posed is a potent argument for minimizing the emphasis laid on its technical aspect. [24]

WHEREFORE, the petition for certiorari is dismissed. No costs.

Makalintal, C.J., Barredo, Antonio, and Fernandez, JJ., concur.

Aquino, J., on sick leave.

[1] The other respondent is Sultan Rent-a-Car, Inc.

[2] Cf. *Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918), through Justice Street: "As applied to a judicial proceeding, however, it may be laid down with certainty that the requirement of due process is satisfied if the following conditions are present, namely; (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing." At 934.

[3] L-24340, July 18, 1967, 20 SCRA 659.

[4] Petition, par. 1.

[5] *Ibid*, par. 2.

[6] *Ibid*, par. 3.

[7] *Ibid*, par. 4.

[8] *Ibid*, par. 5.

[9] Ibid, par. 6.

[10] Ibid, par. 7.

[11] Ibid, par. 3.

[12] Ibid, par. 4 and par. 2, Special and Affirmative Defenses.

[13] Attorneys Pastor C. Bacani and Ernesto Ganiban appeared for private respondent.

[14] Cf. Javellana v. La Paz Ice Plant, 64 Phil. 893 (1937); Ablaza Trans. Co. v. Ocampo, 88 Phil. 412 (1951); Silva v. Ocampo, 90 Phil. 777 (1952); Javier v. De Leon, 109 Phil. 751 (1960).

[15] Cf. Halili v. Semaña, L-15108, Oct. 26, 1961, 3 SCRA 260; Vda. de Cruz v. Marcelo, L-15301, March 30, 1962, 4 SCRA 694; Cababa v. Remigio, L-17832, May 29, 1963, 8 SCRA 50; Mandaluyong Bus Co. v. Enrique, L-21964, Oct. 19, 1966, 18 SCRA 352; Papa v. Santiago, L-16204, April 24, 1967, 19 SCRA 760; Teresa Electric & Power Co. v. Public Service Commission, L-21804, Sept. 25, 1967, 21 SCRA 198; Robles v. Blaylock, L-24123, March 27, 1968, 22 SCRA 1284; Phil. Rabbit Bus Lines v. Gabatin, L-24472, July 31, 1968, 24 SCRA 411; Republic Tel. Co. v. Phil. Long Distance Telephone Co., L-21070, Sept. 23, 1968, 25 SCRA 80; Intestate Testate of Teofilo M. Tiongson v. Public Service Commission, L-24701, Dec. 16, 1970, 36 SCRA 241; Dizon v. Public Service Commission, L-34820, April 30, 1973, 50 SCRA 500.

[16] L-24340, 20 SCRA 659.

[17] Cf. Ibid, 678.

[18] Ibid, 672-673.

[19] Ibid, 675.

[20] Ibid, 676.

[21] Ibid, 677.

[22] Presidential Decree No. 101 (1973).

[23] L-32096, October 24, 1970, 35 SCRA 481.

[24] Cf. 3 Davis, Administrative Law Treatise, 125-128 (1958).

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